

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 358 – HB 867

April 15, 2015

SUMMARY OF ORIGINAL BILL: Requires a physician referral for a mammography screening be to a radiologist or other lawfully appropriate provider.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENTS (005758, 006198, 006540): Amendment 005758 deletes all language after the enacting clause. Prohibits a managed health insurance issuer from directly contacting or employing an agent to directly contact a patient of a network physician's practice in an effort to change a referral for services to another provider, unless: the ordering physician, nurse practitioner under the physician's supervision, physician assistant under the physician's supervision, or a representative of one of the providers is notified and given the opportunity to indicate a particular preference as to the provider of a requested service; the ordering provider is notified if the patient elects a provider other than that requested or preferred by the ordering provider; and the patient is provided orally or electronically with a disclosure that the patient has a right to discuss the change of referral with the patient's ordering physician, nurse practitioner, physician assistant, or representative of one of the providers before the appointment is changed.

States the intent is not to prohibit an insurer or the insurer's agent from contacting its enrollees in a health plan to inform the patient that a provider is not included in the patient's network and that there may be out-of-network costs incurred by using that provider.

Amendment 006198 removes the TennCare program, the CoverKids program, the CoverTN program, the AccessTN program, and any home-and community-based services program through the Division of Health Care Finance and Administration (HCFA) from the provisions of the bill.

Amendment 006540 deletes subsection (c) in Section 1 of amendment 005758 that established a violation was to be considered an unfair trade practice under the Tennessee Unfair Trade Practices and Unfair Claims Settlement Act of 2009 and replaces it with language authorizing the Commissioner of Commerce and Insurance to assess a civil penalty for a violation pursuant to Tenn. Code Ann. § 56-2-305.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- The provisions of the bill as amended could limit an insurance entity's ability to alter a referral if the notification requirements lead to a patient electing a provider that costs more than the provider that the MCO is proposing to re-refer a patient.
- Based on information provided by the Division of Benefits Administration, one of the third party administrators for the state sponsored health plans currently has a support and outreach program approved by the state that has converted over 2,000 referrals resulting in an estimated savings of slightly more than \$2,400,000. This carrier will be able to continue its business process with limited modifications to ensure notification requirements are met. The provisions of the bill as amended will not significantly alter the savings realized.
- The provisions of the bill as amended will not be applicable to TennCare, CoverKids, or AccessTN; therefore, any impact to the state is estimated to be not significant.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENTS:

Other Business Impact – Due to a number of unknown factors, an exact impact to business cannot be reasonably determined.

Assumptions for the bill as amended:

- The provisions of the bill as amended will grant healthcare providers more authority and transparency prior to referrals being changed between in-network and out-of network providers.
- If health insurance entities have implemented re-referral programs to realize savings, the provisions of the bill could prohibit those savings from being realized.
- It is unknown how many referrals will remain with out-of-network or more expensive providers under the provisions of the bill versus the number of out-of-network or more expensive provider referrals would be changed to in-network or less expensive providers in the absence of the bill.
- The health insurance entity will retain the ability to charge out-of-network rates; therefore, the increased expenditures to the health insurance entities are assumed to be passed on to the consumers through increased premiums, rates, fees, and cost sharing.
- Due to a number of unknown factors, the exact impact to commerce cannot be reasonably determined.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink, reading "Jeffrey L. Spalding". The signature is fluid and cursive, with the first name "Jeffrey" and last name "Spalding" clearly legible.

Jeffrey L. Spalding, Executive Director

/kml